

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NADER SHATERIAN,)	Case No. C-11-920 SC
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR PRELIMINARY
v.)	<u>INJUNCTION</u>
)	
WELLS FARGO BANK, NATIONAL)	
ASSOCIATION; CAL-WESTERN)	
RECONVEYANCE CORPORATION; and DOES)	
1-50, inclusive,)	
)	
Defendants.)	

I. INTRODUCTION

This lawsuit involves a mortgage loan Plaintiff Nader Shaterian ("Plaintiff") took out to refinance his Mill Valley, California home, and the subsequent attempts at foreclosure made by Defendants Wells Fargo Bank, National Association ("Wells Fargo") and Cal-Western Reconveyance Corporation ("Cal-Western") when Plaintiff stopped making mortgage payments. Before the Court is a fully briefed motion by Plaintiff for a preliminary injunction barring the June 17, 2011 scheduled foreclosure sale of his residence.¹ ECF No. 20 ("Mot"), 28 ("Opp'n"), 37 ("Reply"). For the following reasons, the Court DENIES Plaintiff's Motion.

¹ At the time Plaintiff filed his Motion, this sale was set for May 20, 2011. See Mot. The parties subsequently stipulated to continue the sale to June 17, 2011 so the Court could rule on Plaintiff's Motion. ECF No. 47.

1 **II. BACKGROUND**

2 In 2003, Plaintiff purchased a home located at 511 Browning
3 Court, Mill Valley, California 94941-3716. ECF No. 1 ("Notice of
4 Removal") Ex. A ("Compl.") ¶¶ 1, 9. In August 2007, Plaintiff
5 sought refinancing of his home "to take advantage of lowering
6 interest rates and to be able to withdraw a portion of the equity
7 in his home to be able to finish needed improvements to his home."
8 Id. ¶ 10. Plaintiff alleges that he spent roughly \$300,000 to
9 build two retaining walls to prevent his home from sliding down the
10 hill on which it was built. Id.

11 Plaintiff alleges that he contacted Diablo Funding Group, Inc.
12 ("Diablo")² and Diablo qualified Plaintiff for a new mortgage loan
13 for the property. Id. ¶¶ 4, 12. On August 27, 2007, Plaintiff
14 signed the Deed of Trust, and it was recorded on September 13,
15 2007. ECF No. 11 ("Def.'s RJN") Ex. 6 ("Deed of Trust").³

17 ² Diablo is not clearly identified in Plaintiff's Complaint or the
18 papers filed before the Court. Plaintiff alleges that Diablo is a
19 California corporation "acting as the agent of World [Savings
Bank]," Compl. ¶ 5, but the facts pleaded suggest Diablo was a
mortgage broker.

20 ³ Wells Fargo asks the Court to take judicial notice of a number of
21 documents. ECF No. 11 ("Def.'s RJN"). Exhibits 1-5 are government
22 documents Wells Fargo relies on to establish that Wells Fargo is
23 the successor in interest to World Savings Bank. Exhibit 6 is the
24 Deed of Trust. Exhibit 7 is the Adjustable Rate Mortgage Note
25 ("ARM Note") dated August 27, 2007 and signed by Plaintiff.
26 Exhibit 8 is the declaration of Plaintiff that was filed in state
27 court before removal. Exhibit 9 is the Notice of Default and
28 Election to Sell Under Deed of Trust ("Notice of Default") dated
October 6, 2010 and recorded on October 7, 2010. Under Rule 201 of
the Federal Rules of Evidence, a court may take judicial notice of
facts generally known within the territorial jurisdiction of the
trial court or capable of accurate and ready determination by
resort to sources whose accuracy cannot reasonably be questioned.
A court may also take judicial notice of a document if the
plaintiff's claim depends on the contents of the document, and the
parties do not dispute the authenticity of the document. Kniesel
v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005). However, the Court

Under the Deed of Trust, Plaintiff received a \$985,000 loan from World Savings Bank ("World") secured by his property. Id. Plaintiff describes the loan as a "Pick-A-Payment" loan, and argues that the loan was "intentionally designed to result in negative amortization and obligations to pay compound interest." Id. ¶ 16. Plaintiff claims he was unaware of the loan's terms at the time he agreed to the loan due to "fraudulent non-disclosure" of their terms. Id. ¶ 13. Specifically, Plaintiff alleges that he was given blank loan documents and told that "the reason for this was that negotiations were still underway with World" and that an employee of Diablo would complete them. Id. ¶ 37. Plaintiff also alleges that the disclosures he did receive were misleading. Id. ¶ 15.

Around October 2009, Plaintiff lost his job and stopped paying his monthly mortgage payments. Reply at 1. Around this time, Wells Fargo became World's successor in interest. Compl. ¶ 44; RJN Exs. 1-6. Plaintiff sought modification of his loan, which Wells Fargo ultimately denied. Compl. ¶ 16. On October 7, 2010, Cal-Western recorded a Notice of Default. Compl. ¶ 48; see Notice of Default. Cal-Western is identified in the Notice of Default as "either the original trustee, the duly appointed substituted trustee, or acting as agent for the trustee or beneficiary" under the Deed of Trust. Id. at 2.⁴ Filed with the Notice of Default is a declaration of Sandra Garza ("Garza"), identified as a vice-

may not take judicial notice of the truth of the facts recited within a judicially noticed document. Lee v. City of Los Angeles, 250 F.3d 668, 688-90 (9th Cir. 2001). The Court GRANTS Wells Fargo's RJN, but limits its review of the exhibits accordingly.

⁴ As the Court discusses infra, Plaintiff hotly disputes this identification of Cal-Western.

1 president of Wells Fargo, in which she both authorizes "the
2 trustee, foreclosure agent, and/or their authorized agent" to sign
3 the Notice of Default on behalf of Wells Fargo and declares that
4 Wells Fargo contacted Plaintiff as required by California Civil
5 Code § 2923.5. Id. at 3.

6 The Notice of Default stated that as of October 6, 2010,
7 Plaintiff had accrued \$60,175.64 in arrears. It stated that
8 Plaintiff had the legal right to stop the sale of the property by
9 bringing his account in good standing prior to the sale, and noted
10 that no sale date could be set until three months after the
11 recording of the Notice of Default. Id. On January 12, 2011, more
12 than three months later, Cal-Western recorded a Notice of Trustee's
13 Sale, setting the sale date of the property for February 1, 2011.
14 Mot. at 5.

15 On, January 31, 2011 -- the day before the scheduled sale --
16 Plaintiff commenced this action in the Superior Court of
17 California, County of Marin. See Compl. Plaintiff brought eleven
18 causes of action against Defendants Wells Fargo and Cal-Western:
19 (1) fraud and deceit; (2) unconscionability; (3) breach of the
20 covenant of good faith and fair dealing; (4) violation of Civil
21 Code § 1916.7; (5) violation of Civil Code §§ 1920 and 1921; (6)
22 violations of the Federal Truth-in-Lending Act ("TILA"); (7) breach
23 of fiduciary duty; (8) unfair business practices; (9) rescission;
24 (10) injunctive relief; and (11) declaratory relief. See id.
25 Some of these causes of action arise from the initial loan
26 agreement; others involve the subsequent foreclosure process and
27 Wells Fargo's refusal to offer Plaintiff a loan modification.

28 Plaintiff also filed an ex parte application for a temporary

1 restraining order barring the sale, which the state court granted,
2 continuing the foreclosure sale to April 11, 2011. Mot. at 5-6. A
3 preliminary injunction hearing was set for April 1, 2011 to
4 determine if the foreclosure sale should be continued until the end
5 of the proceedings. Id. at 6.

6 Defendants removed the case to federal court on February 28,
7 2011. See Notice of Removal. Defendants agreed to two additional
8 continuances of the foreclosure sale; it is currently scheduled for
9 June 17, 2011. ECF No. 47.

10 Now Plaintiff seeks a preliminary injunction enjoining the
11 trustee sale until the termination of this action. Plaintiff has
12 also filed a Motion to Remand, which is fully briefed. ECF Nos. 14
13 ("MTR"), 30 ("MTR Opp'n"), 35 ("MTR Reply").⁵ Wells Fargo filed
14 separate motions to dismiss Plaintiff's Complaint and strike
15 portions of Plaintiff's Complaint; both motions are fully briefed.
16 ECF No. 9 ("MTD"), 33 ("MTD Opp'n"), 39 ("MTD Reply"); 10 ("MTS"),
17 32 ("MTS Opp'n"), 41 ("MTS Reply").⁶

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20 ⁵ Plaintiff concedes in his MTR that this Court has federal
21 question subject matter jurisdiction over this action due to his
22 federal claims. MTR at 8. He argues that the parties are non-
23 diverse, and thus the case should be remanded to state court for
24 lack of subject matter jurisdiction if the federal causes of action
25 are dismissed. Id. Accordingly, neither party challenges the
26 Court's authority to rule on the instant Motion.

27 ⁶ In its Motion and supporting documents, Plaintiff makes numerous
28 references to other pending litigation concerning Wells Fargo and
"Pick-A-Payment" loans, and asks the Court to take judicial notice
of numerous documents. ECF No. 19 ("Pl.'s RJN"). The Court GRANTS
Plaintiff's unopposed RJN, but does not take judicial notice of the
facts recited within the proffered documents. Specifically, it
DENIES Plaintiff's request that the Court take judicial notice of
the fact that "Pick-A-Payment" loans "caused harm to borrowers like
Plaintiff."

III. LEGAL STANDARD

Federal Rule of Civil Procedure 65 permits the issuance of a preliminary injunction to preserve the positions of the parties until a full trial can be conducted. LGS Architects, Inc. v. Concordia Homes, 434 F.3d 1150, 1158 (9th Cir. 2006). To warrant injunctive relief, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Natural Res. Def. Council, 129 S. Ct. 365, 374 (2008). Within the Ninth Circuit, these elements "are balanced, so that a stronger showing of one element may offset a weaker showing of another." Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011). Thus, where the Plaintiff's proof of likelihood of success is limited to raising "serious questions going to the merits," but the balance of hardships tips sharply in Plaintiff's favor, a preliminary injunction may be appropriate. Id.

IV. DISCUSSION**A. Preliminary Matters**

Plaintiff cites to two concurrent actions in his Motion, and argues that both are relevant to his Motion.

First, Plaintiff devotes considerable space to the assurance between California's Office of Attorney General and Wells Fargo, which requires Wells Fargo to offer individuals who purchased "Pick-A-Payment" loans the opportunity to take part in a loan modification structure. See Mot. at 2; Pl.'s RJN Ex. 1 and 2.

1 Under the agreement, Wells Fargo is obligated to offer eligible
2 borrowers loan modifications "presented in a 'waterfall' such that
3 if a borrower is determined not to be eligible for a modification
4 listed in the agreement, the borrower will then be considered for
5 the next modification on the list of possible modifications." Mot.
6 at 4. Borrowers who do not qualify for any of the steps of the
7 waterfall and borrowers whose homes have already been sold at
8 foreclosure sales may receive cash payments. Id. Plaintiff states
9 that he "should qualify for a modification" under this assurance,
10 and asks the Court to enjoin the foreclosure sale so he can proceed
11 through this process. But Plaintiff provides no support for his
12 bald assertion that he "should qualify" under this scheme.
13 Furthermore, this argument in favor of preliminary injunction is
14 completely untethered to the merits of his action. As such, the
15 Court finds this assurance to be of little relevance to this
16 action.

17 Second, Plaintiff refers to a related class action, In Re
18 Wachovia Corp., No. 09-2105 (N.D. Cal.). Plaintiff states that he
19 has opted out of the settlement "because it does not protect people
20 like Plaintiff who have a threatened sale" and "it only gives them
21 possibly some minimal compensation after the fact" and because of
22 the requirement that he release all claims against Wells Fargo.
23 Mot. at 3. But he qualifies this by stating that "the
24 administrator of the settlement may be contesting his opt-out,"
25 without explaining this statement or providing a citation. Id. at
26 4. Plaintiff argues that the existence of this class action
27 settlement supports his motion for injunctive relief. Id.
28 Plaintiff could not be more wrong. If Plaintiff opted out of the

1 Settlement, then he has made the conscious decision to forego its
2 benefits. If Plaintiff has not opted out, then he has released all
3 claims and has no standing to bring this action. Plaintiff cannot
4 have it both ways -- In Re Wachovia has no bearing on this case.

5 **B. Likelihood of Success on the Merits**

6 Plaintiff has the burden of establishing that he is likely to
7 succeed on the merits of his case. Winter, 129 S. Ct. at 374.
8 Plaintiff makes two arguments relating to the merits in his Motion:
9 he argues that Defendants failed to comply with California Civil
10 Code § 2923.5 ("section 2923.5"), and contends that this renders
11 the Notice of Default invalid. Mot. at 8. He also argues that
12 Cal-Western lacked authority to issue the Notice of Default under
13 California Civil Code § 2924(a)(1) ("section 2924(a)(1)"). Id. at
14 9.⁷

15 Plaintiff also briefly argues that his Complaint "contains
16 numerous additional facts and causes of action that satisfy the
17 requirement that he has raised serious questions going to the
18 merits." Mot. at 10. Plaintiff offers no argument that these
19 other causes of action satisfy the requirements for a preliminary
20 injunction; rather, he asks the Court and Defendants to infer these
21 arguments from his Complaint. This is improper: a plaintiff may
22 not support a motion for a preliminary injunction by merely
23 pointing to his complaint and the facts alleged therein. As such,
24 the Court will not consider the other causes of action here.

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26 ⁷ Plaintiff does not bring a cause of action for violation of
27 §2923.5 in his Complaint, and it is unclear which causes of action
28 are predicated on this alleged statutory violation. Section 2924
is only mentioned in Plaintiff's claim for fraud and intentional
deceit. See Compl. ¶ 60.

1 1. Section 2923.5

2 California's Civil Code provides a framework for non-judicial
3 foreclosure: the lender must first record a notice of default; once
4 three months have elapsed, the lender must give notice of the
5 planned foreclosure sale. Cal. Civ. Code § 2924.

6 Section 2923.5 concerns the notice of default. It requires
7 the "mortgagee, trustee, beneficiary, or authorized agent" seeking
8 to file a notice of default to first contact the borrower in person
9 or by telephone "in order to assess the borrower's financial
10 situation and explore options for the borrower to avoid
11 foreclosure." Cal. Civ. Code § 2923.5(a)(2). The notice of
12 default may not be filed until thirty days after this initial
13 contact or the statute's due diligence requirements are satisfied.
14 Id. § 2923.5(a)(1). During this initial contact, the party seeking
15 to file a notice of default must advise the borrower that he or she
16 has the right to request a subsequent meeting and, if requested,
17 schedule the meeting within fourteen days. Id. § 2923.5(a)(2).

18 The California Court of Appeal has narrowly interpreted
19 section 2923.5 "as to avoid having the state law invalidated by
20 federal preemption." Mabry v. Super. Ct., 185 Cal. App. 4th 208,
21 231 (Ct. App. 2010).⁸ The rights provided to borrowers under §
22 2923.5 are purely procedural -- there is no "right" to a loan

23
24 ⁸ Wells Fargo argues that § 2923.5 is preempted by the Federal Home
25 Owners Loan Act ("HOLA"). Opp'n at 5. The Ninth Circuit has not
26 ruled on this issue, and district courts within the Ninth Circuit
27 are split on the issue. See Loder v. World Savings Bank, No. 11-
28 0053, 2011 WL 1884733, at *3 (discussing preemption and collecting
cases). While preemption is a question of federal law, the
interpretation of a state statute is within the purview of the
court of that state. Accordingly, this Court applies Mabry's
narrow application of § 2923.5 and finds this application not
preempted by federal law.

1 modification. Id. The lender's obligations under § 2923.5 to
2 "assess" the borrower's financial situation and "explore" options
3 to avoid foreclosure can be satisfied by simply asking the borrower
4 "why can't you make your payments?" and "telling the borrower the
5 traditional ways that foreclosure can be avoided (e.g., deeds 'in
6 lieu,' workouts, or short sales)." Id. at 232. The statute does
7 not place a duty on the lender "to become a loan counselor itself."
8 Id. at 219.

9 In the declaration filed with the Notice of Default, Wells
10 Fargo vice president Garza declares that Wells Fargo contacted
11 Plaintiff as required by § 2923.5. Notice of Default at 3. Wells
12 Fargo submits as evidence of this the "Consolidated Notes Log" for
13 the loan, which it claims shows a Wells Fargo representative called
14 Plaintiff to discuss loan modification on December 14, 2009, and
15 on March 3, 2010, Plaintiff's authorized loan modification agent
16 contacted Wells Fargo to discuss loan modification. Dolan Decl.
17 Ex. D ("Consol. Notes Log").⁹

18 Plaintiff declares that this is "absolutely untrue," and
19 states that his first contact with Wells Fargo was in June 2010,
20 when he contacted them to inquire into loan modification.

21 Shaterian Decl. ¶ 21. The Court finds that while there may be a
22 dispute as to whether these disclosures took place, Plaintiff is
23 unlikely to succeed on the merits given the evidence produced by
24 Wells Fargo.

25 The remedy available under § 2923.5 is the postponement of a
26 foreclosure sale. Mabry, 185 Cal. App. 4th at 213. Wells Fargo

27 _____
28 ⁹ Michael Dolan ("Dolan"), employee of Wells Fargo and former
employee of World, filed a declaration in opposition to Plaintiff's
Motion. ECF No. 29.

1 additionally argues that even if it had failed to comply with §
2 2923.5, it would not justify enjoining the sale, because the
3 statutory violation itself, not the pending foreclosure, must be
4 the cause of the injury. Opp'n at 8. Essentially, Wells Fargo
5 argues that Plaintiff was aware of the alternatives to foreclosure
6 given that he made multiple attempts to modify his loan, and hence
7 the Plaintiff's lack of money, not his lack of knowledge, led to
8 the foreclosure.

9 Because it is unclear which causes of action are predicated on
10 Wells Fargo's alleged statutory violation, it is unclear whether
11 Plaintiff must prove an injury. Nevertheless, the Court finds
12 merit in Wells Fargo's argument. If Plaintiff had alleged that he
13 was unaware of the alternatives to foreclosure or he had disputed
14 the fact that he was in default on his mortgage, then a claim for
15 relief under § 2923.5 would be stronger. But Plaintiff knew he had
16 not paid his mortgage payments since October 2009, and he had made
17 multiple attempts to modify his loan. California law ensures that
18 borrowers have at least three months between filing of the notice
19 of default and the foreclosure sale so they can attempt to avoid
20 foreclosure. Cal. Civ. Code. § 2924(a)(2). More than seven months
21 have passed since the filing of the Notice of Default. As such,
22 Plaintiff has arguably already received the benefits of § 2923.5.

23 For these reasons, the Court finds that Plaintiff is unlikely
24 to succeed on the merits of a cause of action premised on a
25 violation of § 2923.5.

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2. Section 2924(a)(1)

Section 2923(a)(1) also concerns the notice of default. It requires "the trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for or record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel thereof is situated, a notice of default." Cal. Civ. Code § 2924(a)(1).

The Notice of Default was recorded by Cal-Western. Plaintiff argues that this Notice of Default is void because Cal-Western was not substituted as trustee until December 7, 2010. Mot. at 9. Plaintiff also argues that Cal-Western has not established that it was acting as the agent for the trustee or the beneficiary. Id.

In response, Wells Fargo argues that Cal-Western served as Wells Fargo's authorized agent in recording the Notice of Default. Opp'n at 9. Wells Fargo points to the Garza Declaration, filed with the Notice of Default, in which the Wells Fargo vice president "authorizes the trustee, foreclosure agent and/or their authorized agent to sign, on behalf of the beneficiary/authorized agent, the Notice of Default." See Garza Decl. Wells Fargo also argues that Plaintiff misconstrues the burden of proof, asserting that on a motion for preliminary injunction, Plaintiff has the burden of establishing no agency relationship exists. Opp'n at 9-10.

The Court agrees with Wells Fargo: Plaintiff, not Wells Fargo, has the burden. To establish a § 2924(a)(1) violation at trial, Plaintiff would have to prove by a preponderance of the evidence that Cal-Western was not Wells Fargo's authorized agent at the time it filed the Notice of Default. Plaintiff's sole evidence in support of this argument is the fact that Cal-Western was later

1 substituted as trustee. This evidence does not tend to prove Cal-
2 Western was not Wells Fargo's agent at the time the Notice of
3 Default was filed. Furthermore, to the extent that Plaintiff
4 claims that the alleged statutory violation provides the basis for
5 his fraud cause of action, Plaintiff has failed to allege a related
6 injury caused by this violation.

7 The Court finds Plaintiff is unlikely to succeed on the merits
8 of an action premised on a violation of § 2924(a)(1).

9 **C. Irreparable Harm**

10 Because a preliminary injunction is an "extraordinary remedy
11 that may only be awarded upon a clear showing that the plaintiff is
12 entitled to such relief," Plaintiff must show that he is likely to
13 suffer irreparable injury in the absence of an injunction. Winter,
14 129 S. Ct. at 375-76. Winter overruled the previous test used by
15 the Ninth Circuit and other circuits which required a showing
16 irreparable injury was possible, rather than likely. See Johnson
17 v. Couturier, 572 F.3d 1067, 1081 (9th Cir. 2009).

18 Plaintiff argues that if the sale is not enjoined, his house
19 will be sold, and cites Sundance Land Corp. v. Cmty. First Fed.
20 Sav. & Loan Ass'n, 840 F.2d 653, 661-62 (9th Cir. 1988), for the
21 legal proposition that "foreclosure on real property constitutes
22 irreparable harm." Mot. at 7. Wells Fargo disagrees, citing
23 Alcaraz v. Wachovia Mortgage FSB, 592 F. Supp. 2d 1296, 1304, 1306
24 (E.D. Cal. 2009), another foreclosure case in which the court found
25 that because the plaintiff could not afford the house, the
26 threatened sale did not constitute irreparable harm.

27 The Court agrees with Wells Fargo. While the loss of a home
28 is a serious injury, Plaintiff's injury is undercut by the fact

1 that he has not paid a mortgage payment in eighteen months, is more
2 than \$60,000 in arrears, and does not allege a loss of equity in
3 the property. As such, the Court finds that Plaintiff has failed
4 to establish irreparable harm is likely.

5 **D. Balance of Equities**

6 Plaintiff argues that the balance of equities favors
7 Plaintiff, stating: "If the preliminary injunction is denied,
8 Plaintiff will lose his home to foreclosure. If the preliminary
9 injunction is granted, Defendant will have to delay the foreclosure
10 until the conclusion of this case." Mot. at 12. Wells Fargo
11 counters that Plaintiff has always known the consequences of
12 default, and argues that by postponing the sale, "Wells Fargo would
13 be forced to continue to hold a depreciating security interest,
14 without any ability to stop or slow its ongoing losses." Opp'n at
15 12. Wells Fargo also argues that Plaintiff delayed in seeking
16 injunctive relief, having filed his Complaint the day before the
17 foreclosure sale was initially scheduled. Id. at 12-13. Wells
18 Fargo argues that foreclosure is "inevitable and just" given the
19 fact that Plaintiff "has now been in default for approximately 18
20 months." Id. at 12.

21 The Court agrees with Wells Fargo. Plaintiff claims that he
22 stopped paying mortgage payments when he lost his job. Reply at 1.
23 He claims that he rebuilt his income "to a point where he was able
24 to report to the lender that he made significant income each
25 month." Id. at 3. Yet despite this reversal of fortune, he has
26 made no good faith attempt to bring his account into good standing.
27 He commenced this action at the eleventh hour. These facts do not
28 tip the equities in his favor.

E. Public Interest

Neither party makes a compelling argument that the Court's ruling on Plaintiff's Motion will affect the public interest.

V. CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff Nader Shaterian's motion for a preliminary injunction restraining the trustee's sale of the property. The June 17, 2011 foreclosure sale of the house located at 511 Browning Court, Mill Valley, California shall proceed as scheduled.

Wells Fargo's Motion to Dismiss and Motion to Strike and Plaintiff's Motion to Remand are still before the Court. Because this Order and the foreclosure sale may moot portions of these motions, the parties are ordered to meet and confer to discuss how the sale, this Order, and other developments in the case affect the pending motions. The parties shall file a joint statement with the Court clearly identifying: which causes of action Plaintiff still intends to assert against Defendants; which causes of action, if any, that Plaintiff agrees to strike from his Complaint; and which arguments in the pending motions are now moot. This statement shall be filed no later than fourteen (14) days from the date of this Order. Failure to comply with this Order shall be deemed sufficient grounds for sanctions.

IT IS SO ORDERED.

Dated: June 10, 2011

Samuel Conti
UNITED STATES DISTRICT JUDGE